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No. 201

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

WILLIS SHAW FROZEN EXPRESS, INC., *Appellant*,

v.

UNITED STATES and INTERSTATE COMMERCE COMMISSION, *Appellees*.

Appeal from the United States District Court for the Western District of Arkansas

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BRIEF FOR WILLIS SHAW FROZEN EXPRESS, INC.

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February 17, 1964

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BRIEF FOR WILLIS SHAW FROZEN EXPRESS, INC.

OPINIONS BELOW

The United States District Court for the Western District of Arkansas filed no opinion. The judgment of the District Court dismissing the complaint (R. 395-396) and its order denying Appellant's motion for rehearing (R. 417-418) are not reported. The report of the Interstate Commerce Commission (Division 1) is printed at 89 M.C.C. 377 (R. 334-345). The order of

the Commission denying reconsideration is not reported (R. 386-387). The report and order recommended by the Commission's hearing examiner is not reported (R. 325-333).

JURISDICTION

The judgment of the United States District Court for the Western District of Arkansas was entered February 11, 1963 (R. 395). Appellant's motion for rehearing was denied by the District Court March 8, 1963 (R. 417). Notice of appeal was filed April 11, 1963 (R. 418). Probable jurisdiction was noted October 21, 1963, 375 U.S. 876 (R. 422). This Court has jurisdiction to review the judgment of the District Court under 28 U.S.C. § 1253.

QUESTIONS PRESENTED

1. Whether the "grandfather" clause of section 7(c) of the Transportation Act of 1958 requires the Interstate Commerce Commission to grant to affected motor carriers the right to conduct future regulated operations in substantial parity with the scope of prior unregulated operations.

2. If so, may the Interstate Commerce Commission validly atomize a "grandfather" applicant's common carrier business in the transportation of the entire class of previously unregulated frozen agricultural commodities throughout broad origin and destination territories

> (a) by fragmenting commodity authority through restriction of future operations to transportation of frozen fruits only, between specified points or areas; frozen vegetables only, between

other specified points or areas; and frozen berries only, between yet other specified points and areas;

(b) by refusing to consider the full scope and effect of seasonal and other variations affecting prior operations, together with the holding out and ability of applicant to perform common carrier service;

(c) by reducing for the future the scope of prior operations in the transporation of other frozen agricultural commodities or seafoods, expressly characterized by the statute as exempt from economic regulation by the Commission.

STATUTE INVOLVED

The pertinent provisions of section 7 of the Transportation Act of 1958, 72 Stat. 573, 49 U.S.C. § 303(b)(6) and following, are set out in Appendix A, *infra*, pages 1a-3a.

STATEMENT

This is an appeal from a judgment of the United States District Court for the Western District of Arkansas, composed of three judges, affirming an order of the Interstate Commerce Commission. The order of the Commission denied in part and granted in part an application of Appellant, Willis Shaw Frozen Express, Inc., under the "grandfather" provisions of section 7(c) of the Transportation Act of 1958.

Willis Shaw, the president and principal stockholder of Appellant, started a trucking business in 1938 (R. 160). From 1948 to 1958 the business was a partnership (R. 160). The business was incorpo-

rated under its present name in 1958 (R. 160).[1] Shaw's headquarters and base of operations are at Elm Springs, located in northwest Arkansas (R. 70).

Shaw initially transported fresh fruits, vegetables, and live poultry, commodities exempt from economic regulation by the Commission (R. 160). As these commodities began to be marketed in refrigerated or frozen form, Shaw's equipment and operations were changed accordingly (R. 74, 165). By 1955 Shaw had acquired 29 trucks capable of transporting frozen fruits, berries, and vegetables, as well as iced and frozen poultry (R. 75, 167). On May 1, 1958, the "grandfather" date fixed by the Transportation Act of 1958, Shaw was operating some 34 refrigerated units capable of transporting frozen commodities (R. 77-78, 173). The substantial volume of frozen and ice-packed poultry produced in the northwest Arkansas area and transported by Shaw to destinations throughout a broad area of the country gave Shaw ample equipment available for return movements of other exempt frozen commodities (R. 101). Shaw's transportation services were performed in a broad geographic area and included all of the frozen and refrigerated agricultural commodities and seafoods then exempt from rate and certificate regulation by the Interstate Commerce Commission. Shaw advertised its trucking service as early as 1954 and 1955 in magazines widely circulated in the frozen food, poultry, and egg industries (R. 75, 166). Shaw advertised as a specialist in refrigerated transportation of poultry, eggs, fruits, and vegetables (R. 167, 172, 181). The volume of shipments from any one area fluctuated with the growing

[1] Appellant and its predecessors in interest are hereafter generally referred to as "Shaw."

season of the vegetables, fruits, or berries, and with crop or climatic conditions (R. 7, 39). The distribution pattern of frozen foods required small shipments to be loaded in a single truck for delivery at several destinations, often in different states (R. 89, 228, 232). The various commodities to be shipped on a given truck were sometimes stored in warehouses at different points, and Shaw would pick up parts of the shipment at several points of origin, frequently located in different states (R. 89, 232).

Following enactment of the Transportation Act of 1958 on August 12, 1958, Shaw filed a timely application under the "grandfather" provision of the Act to continue operations as a common carrier over irregular routes of frozen fruits, berries, and vegetables, and frozen seafoods and poultry when transported with such fruits, berries, and vegetables (R. 1). Shaw sought authority to continue operations as a common carrier over irregular routes from and to points in a 35-state area.[2]

A hearing on the application was held before an examiner of the Commission in October 1960. A number of railroads and regulated general commodity truck lines appeared in opposition to the application (R. 65). In support of the application, Shaw presented the testimony of its president and principal stockholder (R. 70-155), copies of advertisements (R. 166, 167, 172), lists of motor vehicles used in perform-

[2] Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin (R. 2).

ing transportation (R. 173-174), records of transportation taxes paid (R. 171), and abstracts of the shipments of exempt frozen fruits, berries, vegetables, poultry and seafood transported during the period January 1955-October 1960 (R. 201-323). The abstracts were supported by production of the original freight bills, invoices, and truck dispatch records kept by Shaw (R. 84). All of the evidence was received except an exhibit showing transportation of iced and frozen poultry (R. 158).

The examiner found that Shaw's operations had been and were those of a common carrier (R. 331); that Shaw was entitled to a certificate to continue operations in the transportation of the entire class of frozen fruits, berries, and vegetables (R. 331); that, "considering the class of commodities transported, the class of shippers served, and the character of service which applicant has rendered," Shaw "should be granted flexible statewide authority" (R. 329-330). The examiner accordingly recommended a substantial portion but not all of the authority for which Shaw had applied (R. 327, 331-332).[3]

Exceptions to the examiner's Report and Recommended Order were filed by an opposing truck line and by Shaw.

The Commission, Division 1 (one member dissenting in part), although finding Shaw's operations to have been those of a common carrier over irregular routes, substantially reduced the authority to which

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[3] A detailed statement of the operating authority to which the examiner found Shaw entitled is set out in Appendix B of this brief, *infra*, pages 4a-9a.

the examiner had found Shaw entitled.[4] The Commission treated each of the frozen commodities—fruits, berries, and vegetables—as a separate class or group for the purpose of determining the prior scope of Shaw's common carrier operations. The Commission thus required a substantial showing of transportation of each of the three commodities, before and after the "grandfather" date, from and to each of the involved points or areas (R. 339-341). The Commission refused to consider any shipment handled by Shaw prior to January 1, 1957, as "too remote from the statutory date" (R. 338). The Commission sustained the examiner's rejection of evidence of transportation of frozen poultry, although the evidence was offered to show Shaw's actual ability to perform service and the availability of motor vehicles on and prior to the statutory date at numerous points within the territory covered by the application (R. 336).

The Commission made no findings with respect to seasonal, climatic, or transportation characteristics of the commodities involved; the character or extent of service held out by Shaw; or the extent of Shaw's actual ability to render service—factors that led the examiner to conclude Shaw should be granted flexible state-wide authority to transport all three of the formerly exempt items.

The Commission, Division 1, acting as an Appellate Division to reconsider its own order, denied Shaw's petition for reconsideration (R. 386-387).

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[4] A detailed statement of the authority to which the Commission concluded Shaw was entitled appears in Appendix B of this brief, *infra*, pages 4a-9a. The Report of the Commission, Division 1, appears at R. 334-345.

This action was filed by Shaw in the United States District Court for the Western District of Arkansas to enjoin, set aside, and annul the order of the Commission. By order dated May 24, 1964, the effective date of the Commission's order was stayed pending further order (R. 394).

The District Court entered judgment February 11, 1963, dismissing the complaint (R. 395). Although the Court filed no opinion, the judgment recited that the Commission's findings and conclusions were "not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law"; that "the findings of fact of the Commission, as set out in its report and order dated September 27, 1961, and served October 5, 1961, are supported by substantial evidence"; and that the Commission, "in applying the provisions of Sec. 7(c) of the Transportation Act of 1958 (72 Stat. 573, following 49 U.S.C., Sec. 303), commonly referred to as the 'grandfather' clause, correctly employed the statutory standards prescribed by Congress in said Act, and that said Commission did not use a new or different standard in interpreting the clause than it did in interpreting the 'grandfather' clause of the predecessor statute, the Motor Carrier Act of 1935, 59 [sic] U.S.C., Sec. 306(a)" (R. 395-396). A motion for rehearing was denied by the District Court (R. 417-418). This appeal followed.

SUMMARY OF ARGUMENT

The "grandfather" clause of section 7 of the Transportation Act of 1958 directed the Commission to issue to truckers of formerly exempt agricultural commodities operating authority to continue bona fide operations conducted on and since the "grandfather" date,

May 1, 1958. The Commission denied Appellant the right to conduct future operations to which it was entitled under the statute. The Commission did so (1) by denying Appellant authority to haul, between the points and areas previously served, the entire class of frozen agricultural commodities—fruits, berries, and vegetables—made subject to regulation, and by limiting Appellant at certain origin points to transportation of a single commodity to some destinations and another commodity to other destinations; (2) by reducing the broad geographic scope of Appellant's prior operations as a result of refusing to consider evidence of operations during the crop seasons prior to 1957, ignoring the transportation characteristics of the service previously rendered, and omitting consideration of Appellant's ability to perform refrigerated truck service; (3) by restricting Appellant's transportation of frozen fish and seafoods—commodities still exempt from economic regulation—in the same truck with frozen fruits, berries, or vegetables.

The Commission violated the standards prescribed for determination of "grandfather" applications. *United States* v. *Carolina Freight Carriers Corp.*, 315 U.S. 475 (1942). The Commission ignored Appellant's status and performance as a common carrier, the transportation characteristics and marketing pattern of these seasonal agricultural products, and the demonstrated ability of Appellant to perform the service. The Commission treated Appellant's prior bona fide operation as a series of unrelated shipments rather than an operational entity. The Commission has prescribed future operations wholly divorced from prior reality.

ARGUMENT

1. Section 7 of the Transportation Act of 1958 Entitles Shaw to Substantial Parity in Commodity and Geographic Scope Between Future Operations and Prior Bona Fide Operations as a Common Carrier

Until August 12, 1958, section 203(b)(6) of the Interstate Commerce Act, 49 U.S.C. § 303(b)(6), exempted from economic regulation by the Commission motor vehicles transporting "ordinary livestock, fish (including shell fish), or agricultural . . . commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation."

The scope and application of this exemption, particularly of the parenthetical "manufactured products," had been repeatedly the subject of litigation before the Commission and the courts. The Commission adopted a restrictive view of the exemption and held that the processing (such as freezing) of agricultural commodities was "manufacture." *Determination of Exempted Agricultural Commodities,* 52 M.C.C. 511, 534 (1951). This Court, however, concluded that processing was not "manufacture" so long as a particular agricultural commodity retained a continuing substantial identity through the processing stage. *East Texas Motor Freight Lines* v. *Frozen Food Express,* 351 U.S. 49, 54 (1956). Under the test of continuing substantial identity, frozen fruits, berries, and vegetables were exempt under section 203(b)(6). *Home Transfer & Storage* v. *United States,* 141 F.Supp. 599 (W.D. Wash. 1956), *aff'd* 352 U.S. 884; see also *Frozen Food Express* v. *United States,* 148 F.Supp. 399 (S.D.Tex. 1956), *aff'd* 355 U.S. 6.

Congress, at the urging of the Commission and others,[5] including railroads and regulated truck lines, amended the exemption. Section 7(a) of the Transportation Act of 1958 defined exempt commodities to include those listed as "Exempt" on the commodity list in Ruling 107, dated March 19, 1958, of the Bureau of Motor Carriers of the Commission, but not to include the items shown in the ruling as "Non-exempt."[6] Section 7(a) further provided that motor vehicles transporting "frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven or knitted)"—all of which had been administratively or judicially determined to be agricultural commodities and were listed as exempt in Ruling 107—should not be exempt from regulation by the Commission on and after August 12, 1958.

The general purpose of section 7 was to freeze the exempt status of agricultural commodities, except specifically enumerated articles including frozen fruits, berries, and vegetables. These agricultural commodities were removed from the exempt list, and their

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[5] See, e. g., Seventy-first Annual Report of the Interstate Commerce Commission (1957), pages 138-139; Hearings—Subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives, 85th Cong., 2nd Sess., on H.R. 5823 (1958), pages 83, 97, 118, 284, 288.

[6] Ruling 107 is reported at ¶ 25,107 Federal Carriers Reports (Commerce Clearing House), and is appended to H.Rep. 1922, 85th Cong., 2nd Sess. (1958).

transportation by motor vehicle was made subject to regulation by the Commission.[7]

"Grandfather" rights were provided for carriers that had transported the commodities made subject to regulation. Section 7(c) of the Transportation Act of 1958 provided that any person who was "in bona fide operation on May 1, 1958, over any route or routes or within any territory, in the transportation of property [made subject to regulation], and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on May 1, 1958, during the season ordinarily covered by its operations and has so operated since that time), except in either instance as to interruptions of service over which such applicant or its predecessor in interest had no control, the Interstate Commerce Commission shall without further proceedings issue a certificate or permit, as the type of operation may warrant. . . ."

This "grandfather" provision of section 7(c) is, except for the date, identical with the "grandfather" provision in the Motor Carrier Act of 1935,[8] when Congress first imposed regulation on the business of interstate trucking. The standards imposed by the statutory language in the 1935 Act for determination of "grandfather" rights were spelled out by this Court in *Alton Railroad Company* v. *United States,* 315 U.S.

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[7] S.Rep. 1647, 85th Cong., 2nd Sess. (1958), Committee on Interstate and Foreign Commerce, pages 4, 22-23; H.Rep. 1922, 85th Cong., 2nd Sess. (1958), Committee on Interstate and Foreign Commerce, page 17; H.Rep. 2274 (Conference Report), 85th Cong., 2nd Sess. (1958), page 15.

[8] 49 Stat. 551, now section 206 of Part II of the Interstate Commerce Act, 49 U.S.C. § 306.

15 (1942); *United States* v. *Carolina Freight Carriers Corp.*, 315 U.S. 475 (1942); and *Howard Hall Company, Inc.* v. *United States*, 315 U.S. 495 (1942).

In *Alton*, this Court approved the Commission's award of broad territorial authority to a "grandfather" applicant who had in fact operated to relatively few points within the territory awarded. The applicant had held itself out to serve, generally, points within the territory granted, and the business of the shippers was such that destination points varied and shifted from time to time. This Court pointed out that

> "While the test of 'bona fide operation' within a specified 'territory' includes 'actual rather than potential or simulated service' . . . it does not necessarily restrict future operations to the precise points or areas already served. The characteristics of the transportation service rendered may of necessity have made trips to any specified locality irregular or sporadic. And they may likewise have restricted prior operations to but a few points in a wide area which the carrier held itself out as being willing and able to serve." 315 U.S. 15, 21.

This Court held in *Alton* that the purpose of the "grandfather" clause was to create for those to whom Congress had extended its benefits a "substantial parity between future operations and prior bona fide operations." 315 U.S. 15, 22.

In *Carolina Freight Carriers*, this Court held that the substantial parity contemplated by the statute would not be preserved if the Commission granted "grandfather" rights imposing commodity limitations more restrictive than those self-imposed by the carrier

in prior bona fide operations. Noting that a common carrier by motor vehicle is one who "undertakes . . . to transport passengers or property, or any class or classes of property, for the general public in interstate . . . commerce by motor vehicle for compensation . . .,"[9] this Court held that the Commission

> ". . . may not atomize [the applicant's] prior service, product by product, so as to restrict the scope of his operations, where there is substantial evidence in addition to his holding out that he was in 'bona fide operation' as a 'common carrier' of a large group of commodities or of a whole class or classes of property. There might be substantial evidence of such an undertaking though the evidence as to any one article was not substantial. . . the natural and normal course of his business may reveal a continuous undertaking to transport any or all commodities embraced within the group or the class. . . . The questions are whether his service within the territory in question was sufficiently regular and whether his coverage of commodities was sufficiently representative to support a finding that he was in 'bona fide operation' as a 'common carrier' of the groups of commodities or of the class or classes of property during the periods in question." 315 U.S. 475, 484.

Moreover, "The fact that a particular commodity had never been transported between certain points in that territory would not mean that authority to haul it between them should be withheld. Likewise, if the applicant could establish that it was a 'common carrier' only of a limited number of commodities, there would normally be no statutory sanction for limiting the carriage of particular commodities in that group

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[9] As amended, section 203(a)(14) of Part II of the Interstate Commerce Act, 49 U.S.C. § 303(a)(14).

to specified points in the authorized area." 315 U.S. 475, 486.

The statutory standards this Court applied in connection with the "grandfather" provision of the 1935 Act, and the insistence upon adequate findings to support the Commission's order, are equally applicable to determination of "grandfather" rights conferred upon Appellant by section 7(c) of the 1958 Act. *Winter Garden Company* v. *United States,* 211 F. Supp. 280 (E.D. Tenn. 1962); *Hale Distributing Company* v. *United States,* 221 F.Supp. 266 (S.D. Cal. 1963); *Frozen Food Express* v. *United States,* 219 F.Supp. 131 (N.D. Tex. 1963).

2. There Is No Rational Finding by the Commission and No Substantial Record Evidence to Support Fragmenting Appellant's Transportation of Frozen Fruits, Berries, and Vegetables

The Commission, unlike the hearing examiner, refused to treat the formerly exempt frozen agricultural commodities—fruits, berries, and vegetables—as a single class of commodities, or to regard Appellant as a common carrier of the entire class. The Commission treated each frozen commodity separately, although finding Shaw's operations to be those of a common carrier (R. 338). The Commission required, as a prerequisite to future operations, a showing of substantial transportation, on and since the "grandfather" date, of each commodity to and from each geographic point. The Commission limited Appellant's future operations to a single one of the frozen commodities from a number of points or areas; in many instances, authority was limited to transportation, from a single origin, of one item to some destinations and another item to other destinations(R. 342).

This fragmenting of the geographic and commodity scope of prior service denies Appellant "substantial parity" between future operations and those prior to the "grandfather" date. *Winter Garden Company* v. *United States, supra,* at 289. The Commission ignored Appellant's holding out, as a common carrier, to transport all of the commodities. The Commission refused to consider Appellant's demonstrated ability to perform such service. The Commission disregarded the nature of the commodities involved. Frozen fruits, frozen berries, and frozen vegetables are and were transported identically in refrigerated trucks. The three commodities may be and frequently were transported by Shaw in the same vehicle at the same time (R. 292, 297, 298, 302). Shaw transported all of these sub-categories over broad areas prior to the "grandfather" date. Shaw advertised widely in the frozen food industry as a specialist in transporting all of the frozen commodities (R. 166, 167, 172). Shaw's only criterion was that the frozen commodities transported be among those exempt from regulation under section 203(b)(6)—as it stood prior to the 1958 amendment. Any failure actually to transport exempt frozen commodities between any given pair of points was fortuitous and not due to limitations imposed by Shaw on service offered to the public.

The serious effect of this fragmenting on Shaw's future operations is made clear by example: The Commission granted Shaw authority to transport frozen fruits, berries, and vegetables from points in the Lower Peninsula of Michigan to Kansas City, Missouri (R. 342). The Commission limited Shaw, however, to transportation of only frozen fruits from precisely the same origin to St. Joseph, Missouri; Omaha, Nebraska; Oklahoma City, Oklahoma; and points in

Kansas (R. 342). Shaw had transported frozen fruits, berries, and vegetables from Michigan origins to Kansas City, Missouri, during the 1957-1958 period considered relevant by the Commission, but had transported only frozen fruits to the other points in Missouri and to Kansas and Oklahoma (R. 237, 239, 241, 247, 251).

Other than a tabulation of prior shipments transported by Shaw, the Report of the Commission discloses no findings for the conclusion that Shaw's common carrier operations from Michigan to Kansas City, Missouri, included all three of the frozen agricultural commodities, but that operations from Michigan to points near Kansas City, such as St. Joseph, Missouri, were limited to a single item. Obviously, Shaw made no such distinction in the operations performed. Shaw transported all of the exempt frozen commodities as, where, and when tendered by the shipper. There is no statutory or factual justification for this "pulverization" of Appellant's prior operations. *Carolina Freight Carriers, supra,* at 488.

3. The Commission Unlawfully Curtailed Appellant's Future Operations by Refusing to Consider Relevant Evidence of Shaw's Past Performance and Ability to Perform Common Carrier Service

The Commission refused to consider evidence of Shaw's operations prior to January 1957 on the ground that such operations were "too remote" from the statutory date (R. 338). Applied to agricultural commodities, this conclusion ignores the transportation characteristics of the commodities and the language of the "grandfather" clause of section 7(c), which directs recognition of seasonal variations and interruptions in service over which the trucker had no control.

Winter Garden Company v. *United States, supra,* at 288; *Hale Distributing Company* v. *United States, supra,* at 270; *Frozen Food Express* v. *United States, supra,* at 137.

The evidence of record was that origins, destinations, and identity of commodities shipped between particular points varied with market considerations peculiar to the shippers' businesses, climatic and crop conditions, and the seasonal nature of agricultural commodities (R. 7, 89, 329). There are, therefore, substantial variations from year to year in the transportation service required and performed. The Commission limited consideration of Shaw's past operations to areas and points served during a single crop season. This made impossible a determination of the scope of Shaw's prior bona fide operations in light of the transportation and marketing characteristics of these commodities.[10]

Both the geographic and the commodity scope of operations previously conducted by Shaw were sharply curtailed for the future by the Commission's refusal to consider evidence of operations prior to 1957, combined with the treatment of each commodity as a separate class. The treatment given Shaw's operations from its home base in northwest Arkansas illustrates the restrictive and injurious effect upon future opera-

[10] The Commission also refused to consider, as relevant to any issue, evidence of the extent to which Shaw had trucks (suitable for the transportation of these frozen commodities) available to shippers in the territory within which Shaw held out a common carrier service. The Commission rejected an exhibit showing shipments of iced and frozen poultry, offered to show the points at which, after unloading, Shaw had available empty refrigerated trucks for which shipments of all types of exempt frozen agricultural commodities were solicited (R. 336).

tions of the Commission's exclusion of pre-1957 shipments and pulverization of prior operations:

The examiner found Appellant entitled to a certificate authorizing transportation of frozen fruits, berries, and vegetables from Little Rock, Arkansas, and from the northwest area of Arkansas, including Ft. Smith, Fayetteville, and Prairie Grove, to all points in Illinois, Michigan, Missouri, and Texas (R. 331-332).

The Commission, however, found as follows:

> "*Arkansas origins.* Protestant concedes that applicant's operations warrant a grant of authority to transport frozen vegetables from Ft. Smith to Detroit, and frozen berries from Ft. Smith to Chicago. We find that it has transported frozen vegetables before and after the critical date from Ft. Smith to San Francisco and Miami and Jacksonville, Fla., and that it therefore should be granted that additional authority. Four other scattered shipments (from two origins to four destinations in three States) occurred prior to the critical date during 1957 and 1958. Shipments from and to these points were not repeated subsequently. Various other points were served subsequently, but it would be very unrealistic for us to conclude that applicant was conducting operations from and to other points on the statutory date." (R. 340-341)

Interstate shipments originated by Shaw in Arkansas from 1956 through 1959 are reproduced on pages 20-21. Italics indicate shipments the Commission would permit Appellant to transport. All but four of the shipments prior to the May 1, 1958, "grandfather" date moved from Arkansas in the period between April 1 and late October, the crop season for agricultural commodities in the area (R. 7). The

SHIPMENTS OF FROZEN FRUITS, VEGETABLES, AND BERRIES ORIGINATED BY APPELLANT IN ARKANSAS

January 18, 1956, to May 19, 1959
(From Exhibit No. 22, R. 219-273)

Italicized entries indicate the only shipments the Commission found Appellant entitled to continue to transport

Page of Record	Date	Frozen Commodity	Arkansas Origin	Destination
219	1-18-56	Vegetables	Ft. Smith	Kansas City, Mo.
220	2-10-56	Vegetables	Ft. Smith	Kansas City, Mo.
221	3-15-56	Vegetables	Van Buren	New York, N. Y.
221	4-10-56	Vegetables	Ft. Smith	Kansas City, Mo.
222	5-12-56	Berries	Ft. Smith	Minneapolis, Minn.
222	5-14-56	Berries	Little Rock	Kansas City, Kan.
222	5-15-56	Vegetables	Ft. Smith	Kansas City, Mo.
222	5-16-56	Berries	Little Rock	Elkhart, Ind. Kankakee, Ill.
223	5-20-56	Berries	Little Rock	St. Joseph, Mo. Kansas City, Mo. Pittsburg, Kan.
223	5-23-56	Berries	Ft. Smith	Minneapolis, Minn.
223	6-07-56	Berries	Prairie Grove	Dallas, Texas
223	6-12-56	Berries	Prairie Grove	Des Moines, Iowa
224	7-07-56	Veg. & Berr.	Ft. Smith	Kansas City, Mo.
226	9-20-56	Vegetables	Ft. Smith	Birmingham, Ala. Tampa, Fla.
227	*10-20-56*	*Berries*	*Ft. Smith*	*Chicago, Ill.*
231	4-08-57	Fruits	Van Buren	Houston, Texas
231	*4-13-57*	*Vegetables*	*Ft. Smith*	Atlanta, Ga. *Jacksonville, Fla.*
232	4-29-57	Vegetables	Fayetteville	Camden, N. J.
235	*7-03-57*	*Vegetables*	*Ft. Smith*	*Miami, Fla.*
238	9-06-57	Berries	Ft. Smith	Buffalo, N. Y. Amsterdam, N. Y.
247	*3-07-58*	*Vegetables*	*Ft. Smith*	*San Francisco, Calif.*
250	*4-26-58*	*Vegetables*	*Ft. Smith*	*Detroit, Mich.*
		May 1, 1958		
250	5-07-58	Vegetables	Ft. Smith	Philadelphia, Pa. Camden, N. J.
250	5-07-58	Vegetables	Ft. Smith	Chicago, Ill.
251	5-25-58	Vegetables	Ft. Smith	Kansas City, Kan.
252	6-06-58	Veg. & Berr.	Ft. Smith	Chicago, Ill. St. Louis, Mo.
252	6-13-58	Veg. & Berr.	Ft. Smith	Chicago, Ill.
252	6-17-58	Vegetables	Ft. Smith	Exmore, Va.
254	7-28-58	Fruits & Veg.	Ft. Smith	Detroit, Mich.
255	8-19-58	Veg. & Berr.	Ft. Smith	St. Louis, Mo. Chicago, Ill.

Page of Record	Date	Frozen Commodity	Arkansas Origin	Destination
259	10-21-58	Vegetables	Searcy	Hillsboro, Ore.
261	11-05-58	Berries	Springdale	Kansas City, Mo.
261	11-05-58	Vegetables	Ft. Smith	St. Louis, Mo. Columbia, Mo.
261	11-12-58	Vegetables	Little Rock	St. Louis, Mo.
262	*11-28-58*	*Vegetables*	*Ft. Smith*	*Detroit, Mich.*
262	*12-09-58*	*Vegetables*	Little Rock *Ft. Smith*	St. Louis, Mo. *Detroit, Mich.*
264	1-26-59	Vegetables	Ft. Smith Little Rock	Mobile, Ala Birmingham, Ala.
267	*2-18-59*	*Vegetables*	*Ft. Smith*	*Detroit, Mich.*
268	*3-09-59*	*Vegetables*	*Ft. Smith*	*Detroit, Mich.*
269	3-25-59	Vegetables	Ft. Smith	Birmingham, Ala. Nashville, Tenn.
270	4-14-59	Vegetables	Ft. Smith	Houston, Texas
271	4-22-59	Vegetables	Ft. Smith	Philadelphia, Pa.
272	*5-06-59*	*Vegetables*	*Ft. Smith*	*Detroit, Mich.* Chicago, Ill.
273	5-14-59	Berries	Ft. Smith	Waco, Texas Dallas, Texas
273	5-19-59	Berries	Van Buren	Houston, Texas
275	6-24-59	Berries	Searcy	Pittsburgh, Pa.
276	7-23-59	Vegetables	Ft. Smith	Philadelphia, Pa. Baltimore, Md.
277	7-29-59	Veg. & Berr.	Ft. Smith	Kansas City, Mo.
276	8-05-59	Vegetables	Ft. Smith	Montgomery, Ala. Nashville, Tenn. Birmingham, Ala.
279	8-27-59	Vegetables	Ft. Smith	Dallas, Tex.
279	*9-05-59*	*Vegetables*	*Ft. Smith*	Mobile, Ala. *Jacksonville, Fla.* *Miami, Fla.*
281	9-26-59	Vegetables	Ft. Smith	Tampa, Fla. Birmingham, Ala. Montgomery, Ala.
282	10-03-59	Vegetables	Ft. Smith	Dallas, Tex.
282	10-08-59	Vegetables	Ft. Smith	Macon, Ga.
283	10-10-59	Vegetables	Ft. Smith	Birmingham, Ala. Jackson, Miss.
285	10-30-59	Veg. & Poultry	Fayetteville	Omaha, Neb.
285	11-07-59	Vegetables	Ft. Smith	Philadelphia, Pa.
286	11-13-59	Vegetables	Little Rock Ft. Smith	Montgomery, Ala. Birmingham, Ala.
287	12-08-59	Vegetables	Searcy	Portland, Ore.
288	12-16-59	Veg. & Berr.	Ft. Smith	Philadelphia, Pa.
289	12-28-59	Vegetables	Ft. Smith	Philadelphia, Pa. Richmond, Va.

May 1 "grandfather" date fixed by the statute cut off most of the 1958 season for shipments from Arkansas origins. The Commission's exclusion of 1956 shipments meant that Appellant's statutory rights were determined essentially on the basis of a single season's operations. The Commission chopped up the broad-range service Shaw had performed from Arkansas by disregarding repetitive service to a number of destination points and areas served before and after the "grandfather" date. Consideration of the earlier shipping seasons makes apparent the broad scope of Shaw's holding out to transport the entire class of commodities and to serve broad destination areas from Arkansas.

The disastrous impact on Appellant of the Commission's treatment appears by comparison of service actually performed by Shaw from Arkansas (set out on pages 20-21 of this brief) with the limited service Shaw would be permitted to perform under the Commission's findings. In the 16 months prior to the May 1, 1958, "grandfather" date, Shaw transported 22 truckloads of frozen fruits, berries, vegetables, or a mixture of these items, to 22 cities in 14 states from points in northwest Arkansas. Appellant would be permitted by the Commission to transport only four of these truckloads and part of another from Arkansas to the widely separated destinations of Miami and Jacksonville, Florida, San Francisco, California, Chicago, Illinois, and Detroit, Michigan (R. 342-343). In the 20-month period after the May 1, 1958, "grandfather" date to the end of 1959, Shaw transported 39 truckloads of frozen fruits, berries, vegetables, or a mixture of these items, from points in Arkansas. The Commission would permit Appellant to transport only

three of these loads and part of three others (R. 342-343). Prior to the "grandfather" date, Shaw transported, from one or more of the northwest Arkansas origins, frozen fruits, berries, and vegetables to a variety of destinations. The Commission, however, denied all authority to transport frozen fruits from Arkansas; authorized transportation of frozen berries (but not frozen vegetables) from Ft. Smith to Chicago, Illinois; authorized transportation of frozen vegetables (but not frozen berries) from Ft. Smith to Detroit, Michigan (R. 342-343). The cumulative effect of these restrictions is to forbid Shaw to transport such shipments as the frozen vegetables that moved on May 7, 1958, to Chicago; the mixed shipment of frozen berries and vegetables that moved to Chicago on June 6, 1958; the mixed shipment of frozen fruits and vegetables that moved on July 28, 1958, to Detroit. Excluding consideration of operations prior to 1957 permitted the Commission to limit the destinations to specific points to be served from Arkansas rather than to grant the statewide destination areas Shaw held itself out to serve and had in fact served. For example, the Commission authorized Shaw to transport vegetables from Ft. Smith to Jacksonville, Florida, a distance of almost 1,000 miles. Shaw was not authorized to serve any intermediate point or area, despite the fact that the very shipment on which the Commission must have relied for the Jacksonville destination (April 13, 1957; R. 231) was, in part, delivered at the intermediate point of Atlanta, Georgia. Nothing in the findings of the Commission justifies or establishes a basis for this treatment. If the Commission had been willing to consider the broad sweep of Shaw's operations from Arkansas, the restrictions imposed on future operations could not have been justified. Reference to the evi-

dence covering 1956 would have shown shipments from Ft. Smith to Birmingham, Alabama, and Tampa, Florida (R. 226), and, in the period immediately following the "grandfather" date, to Mobile (R. 264, 279), Birmingham (R. 264, 269, 276), and Montgomery (R. 276, 281), Alabama, and Nashville, Tennessee (R. 269, 276), as well as Tampa, Jacksonville, and Miami, Florida (R. 279, 281).

Shaw's prior common carrier service was obviously not limited to transportation from Arkansas of one item—frozen vegetables—to two points—Jacksonville and Miami—in the southeastern part of the United States. The Commission fragmented the service performed by Shaw and, ignoring the evidence of record, reached its conclusions by treating Shaw's prior service as a series of unrelated incidents. The result was to prescribe future operations divorced from reality.

This Court, in *Carolina Freight Carriers, supra,* at 488, noted that the Commission's determination of the scope of "grandfather" rights involves the economic life or death of the carrier, and that "empty or partially loaded trucks on return trips may well drive the enterprise to the wall." 315 U.S. 475, 488. It is impossible to believe that a trucking operation transporting—from Ft. Smith, Arkansas—frozen berries to Chicago and frozen vegetables to Miami and Jacksonville, Florida; San Francisco, California; and Detroit, Michigan, ever was or could be an operating or economic reality. Shaw would not have survived to reach the "grandfather" date by operating under the commodity and point-to-point restrictions the Commission now proposes to fasten on the operation. The Commission has effectively destroyed Shaw's struggle to obtion a place in the national transportation system. *Carolina Freight Carriers, supra,* at 488.

4. There Is No Rational Basis for the Commission's Denial of Authority to Transport Other Exempt Commodities

The Commission denied authority for Shaw to continue transporting frozen fish and seafood in the same vehicle with frozen fruits, berries, and vegetables, even within the limited geographic scope of the authority granted. The Commission thus effectively destroyed Appellant's pre-existing right to transport frozen fish and seafood in mixed shipments with frozen fruits, berries, and vegetables.

Prior to the Transportation Act of 1958, Appellant was free to transport frozen, uncooked, fish and shell fish without Commission authority, not only in full truckloads but also as partial loads in the same vehicle with frozen fruits, berries, and vegetables. Section 7(a) of the 1958 Act expressly made frozen fruits, berries, and vegetables subject to regulation, but the exemption for frozen fish and seafood was expanded to include "cooked or uncooked (including breaded)" fish and shell fish. The Commission's position is that carriers granted "grandfather" authority to transport frozen fruits, berries and/or vegetables are not authorized to transport frozen fish or shell fish in the same vehicle at the same time with frozen fruits, berries, and vegetables. Specific operating authority is required to transport such mixed loads. *Lewis, Common Carrier "Grandfather" Application,* 82 M.C.C. 755 (1960). In the Commission's view, carriers seeking "grandfather" authority to transport frozen fruits, berries, and vegetables might also be granted authority to transport mixed shipments, of which seafoods are a part, upon proof by the carrier of actual transportation of such mixed shipments prior to the "grandfather" date.

Appellant sought authority to transport frozen poultry, frozen fish, and seafood in the same vehicle with frozen fruits, berries, and vegetables (R. 2). Appellant relied upon a showing of actual past transportation of frozen fish, a prior holding out to transport exempt frozen foods generally, and the clearly implicit statutory intent to preserve and broaden the scope of the exemption for fish and shell fish. The scope of the authority granted by the Commission was, however, limited by the same mechanical process—tabulating prior shipments hauled by Shaw—used in the case of frozen fruits, berries, and vegetables. The Commission granted Appellant authority, as relevant here, to transport

> "frozen fish [only] when moving in the same vehicle and at the same time with frozen fruits, frozen vegetables, or frozen berries from Seattle, Wash., and Astoria, Oreg. . . . and from San Francisco, Monterey, San Jose, and Los Angeles, Calif. [to points in named midwestern states]." (R. 343)

This limited authority destroys any opportunity for Appellant to continue offering a service commensurate with that offered in the past. The effect is far less than substantial parity with Shaw's prior actual carriage of frozen fish.

Most shipments of frozen fruits, vegetables, and berries transported by Appellant from the West Coast area were from inland points such as Watsonville, Modesto, and Sanger, California (R. 265, 272). Shipments of fish were, of course, from seaports such as Monterey (R. 198). The Commission denied authority to transport mixed shipments from inland points, where the "mixing" would normally occur and regulated movement of fish would originate. For example, if Appellant had a vehicle available for loading at

Monterey, and were tendered a partial load of eastbound frozen fish at that point and of eastbound frozen vegetables at the inland California point of Modesto, both shipments could be handled in that one vehicle only by moving east to Modesto for the vegetables, then west to Monterey to mix in the fish shipment, then again east to destination. No trucker could operate economically in this fashion. Obviously, as the record demonstrates, past shipments were mixed at inland points enroute to destinations farther east (R. 99, 198, 249). The Commission has precluded the flexibility of operations that is vital to a broad-range trucking operation. The Commission imposed on Appellant an operational straitjacket that did not exist prior to 1958, and did so in direct contravention of its own conclusion that a "comparatively broad grant of [frozen fish] rights is warranted to allow continued flexibility in applicant's operations" (R. 337).

CONCLUSION

Appellant, Willis Shaw Frozen Express, Inc., for all of the foregoing reasons, submits that the judgment of the District Court should be reversed and the proceeding remanded to the Interstate Commerce Commission.

Respectfully submitted,

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APPENDIX A

Part II of the Interstate Commerce Act

Section 203(b)(6), 49 U.S.C. § 303(b)(6), 72 Stat. 573*

(b) Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . (6) motor vehicles used in carrying property consisting of ordinary liv stock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation: Provided, That the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultral) commodities (not including manufactured products thereof)" as used herein shall include property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not exempt": Provided further, however, That notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shell fish) or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shell fish when frozen or fresh (but not including fish and shell fish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered products). . . .

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* All but the italicized portion of this section was effected by section 7(a) of the Transportation Act of 195° 72 Stat. 573.

Transportation Act of 1958

Section 7(b), 72 Stat. 574, following 49 U.S.C. § 303

Unless otherwise specifically indicated therein, the holder of any certificate or permit heretofore issued by the Interstate Commerce Commission, or hereafter so issued pursuant to an application filed on or before the date on which this section takes effect [August 12, 1958], authorizing the holder thereof to engage as a common or contract carrier by motor vehicle in the transportation in interstate or foreign commerce of property made subject to the provisions of part II of the Interstate Commerce Act by paragraph (a) of this section [amending § 203(b)(6), *supra*], over any route or routes or within any territory, may without making application under that Act engage, to the same extent and subject to the same terms, conditions and limitations, as a common or contract carrier by motor vehicle, as the case may be, in the transportation of such property, over such route or routes or within such territory, in interstate or foreign commerce.

Section 7(c), 72 Stat. 574, following 49 U.S.C. § 303

Subject to the provisions of section 210 of the Interstate Commerce Act [49 U.S.C. § 310], if any person (or its predecessor in interest) was in bona fide operation on May 1, 1958, over any route or routes or within any territory, in the transportation of property for compensation by motor vehicle made subject to the provisions of part II of that Act by paragraph (a) [§ 203(b)(6) amendment] of this section, in interstate or foreign commerce, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on May 1, 1958, during the season ordinarly covered by its operations and has so operated since that time), except in either instance as to interruptions of service over which such applicant or its predecessor in interest had no control, the Interstate Commerce Commission shall without further

proceedings issue a certificate or permit, as the type of operation may warrant, authorizing such operations as a common or contract carrier by motor vehicle if application is made to the said Commission as provided in part II of the Interstate Commerce Act and within one hundred and twenty days after the date on which this section takes effect [August 12, 1958]. Pending the determination of any such application, the continuance of such operation without a certificate or permit shall be lawful. Any carrier which on the date this section takes effect is engaged in an operation of the character specified in the foregoing provisions of this paragraph, but was not engaged in such operation on May 1, 1958, may under such regulations as the Interstate Commerce Commission shall prescribe, if application for a certificate or permit is made to the said Commission within one hundred and twenty days after the date on which this section takes effect, continue such operation without a certificate or permit pending the determination of such application in accordance with the provisions of part II of the Interstate Commerce Act.

APPENDIX B

Comparative Statement of Operating Authority Recommended by Hearing Examiner (R. 331-332) and That Granted by the Commission (R. 342-343) in MC-117119 (Sub. No. 2)

Hearing Examiner	*Commission*
1. Frozen Fruits, Frozen Berries and Frozen Vegetables From points in California To Denver, Colorado, Detroit, Michigan, Omaha, Nebraska, and points in Arkansas, Illinois, Iowa, Kansas, Missouri, Oklahoma and Texas	1. Frozen Fruit, Frozen Berries and Frozen Vegetables From points in California To points in Arkansas, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and Texas The Commission did NOT grant: From points in California To Denver, Colorado, Detroit, Michigan, or points in Illinois
2. Frozen Fruits, Frozen Berries and Frozen Vegetables From points in Oregon and Washington To Denver, Colorado, Detroit, Michigan, Omaha, Nebraska, and points in Arkansas, Illinois, Iowa, Kansas, Missouri, Oklahoma and Texas	2. Frozen Fruit, Frozen Berries and Frozen Vegetables From points in Oregon and Washington To points in Arkansas, Kansas, Missouri, and Oklahoma The Commission did NOT grant: From points in Oregon and Washington To Denver, Colorado, Detroit, Michigan, Omaha, Nebraska, or to points in Illinois, Iowa, and Texas

Hearing Examiner	*Commission*
3. Frozen Fruits, Frozen Berries and Frozen Vegetables From Burley, Caldwell and Nampa, Idaho To Denver, Colorado, Detroit, Michigan, Omaha, Nebraska, and points in Arkansas, Illinois, Iowa, Kansas, Missouri, Oklahoma, and Texas	3. The Commission did NOT grant any authority from Idaho
4. Frozen Fruits, Frozen Berries and Frozen Vegetables From Little Rock, Arkansas, and points in that part of Arkansas on, north and west of a line beginning at the Arkansas-Oklahoma State line near Fort Smith, Arkansas, and extending along Arkansas Highway 22 to Dardanelle, Arkansas, thence northward along Arkansas Highway 7 to Harrison, Arkansas, and thence along U. S. Highway 65 to the Arkansas-Missouri State line To points in Illinois, Michigan, Missouri, and Texas	4. Frozen Vegetables From Fort Smith, Arkansas To Detroit, Michigan, Miami and Jacksonville, Florida, and San Francisco, California Frozen Berries From Fort Smith, Arkansas To Chicago, Illinois The Commission did NOT grant: (a) any point of origin in Arkansas other than Fort Smith, and that limited to either frozen berries or frozen vegetables; (b) any point of destination in Illinois other than Chicago, and that limited to frozen berries; (c) any point of destination in Michigan other than Detroit, and that limited to frozen vegetables; (d) any point of destination in Missouri or Texas

Hearing Examiner	*Commission*
5. Frozen Fruits, Frozen Berries and Frozen Vegetables From points in Minnesota on and south of U. S. Highway 14 To Omaha, Nebraska, and points in Arkansas, Kansas, Missouri, and Oklahoma	5. Frozen Vegetables From points in Minnesota on and south of U. S. Highway 14 To Omaha, Nebraska, Kansas City and St. Joseph, Missouri, Oklahoma City, Oklahoma, and points in Arkansas and Kansas The Commission did NOT grant: (a) Frozen berries or frozen fruits; (b) any point in Missouri as destination, other than Kansas City and St. Joseph; (c) any point in Oklahoma as destination, other than Oklahoma City.
6. Frozen Fruits, Frozen Berries and Frozen Vegetables From points in the Lower Peninsula of Michigan To Omaha, Nebraska, and points in Kansas, Missouri, and Oklahoma	6. Frozen Fruit From points in the Lower Peninsula of Michigan To Omaha, Nebraska, St. Joseph, Missouri, Oklahoma City, Oklahoma, and points in Kansas Frozen Fruit, Frozen Berries and Frozen Vegetables From points in the Lower Peninsula of Michigan To Kansas City, Missouri The Commission did NOT grant: (a) Frozen berries or frozen vegetables, other than to Kansas City, Missouri;

Hearing Examiner	*Commission*
	(b) any point in Missouri as destination, other than St. Joseph and Kansas City;
	(c) any point in Oklahoma as destination, other than Oklahoma City.
7. Frozen Fruits, Frozen Berries and Frozen Vegetables	7. Frozen Fruit
From Kansas City, Kansas, Kansas City, Missouri, Omaha, Nebraska, and Oklahoma City, Oklahoma	From Omaha, Nebraska
To points in California and Oregon	To Modesto, California
	The Commission did NOT grant:
	(a) Frozen berries or frozen vegetables;
	(b) Kansas City, Kansas, Kansas City, Missouri, or Oklahoma City, Oklahoma, as points of origin;
	(c) any point of destination in California other than Modesto;
	(d) any point of destination in Oregon.
8. Frozen Fruits, Frozen Berries and Frozen Vegetables	8. Frozen Vegetables
From Omaha, Nebraska	From Omaha, Nebraska
To points in Arkansas	To points in Arkansas
	The Commission did NOT grant:
	Frozen fruits or frozen berries
9. Frozen Fruits, Frozen Berries and Frozen Vegetables	9. Frozen Fruit, Frozen Berries and Frozen Vegetables
From Chicago, Illinois	From Chicago, Illinois
To Kansas City, Missouri	To Kansas City, Missouri

Hearing Examiner	*Commission*
10. Frozen Fish when moving in the same vehicle with frozen fruits, frozen vegetables	10. Frozen Fish when moving in the same vehicle and at the same time with frozen fruits, frozen vegetables or frozen berries
From Monterey, San Jose, San Francisco, and Los Angeles, California, Idaho Falls and Twin Falls, Idaho, Astoria, Oregon, and Seattle, Washington	From Seattle, Washington, and Astoria, Oregon
To points in Arkansas, Illinois, Iowa, Kansas, Missouri, Oklahoma, and Texas	To points in Arkansas, Kansas, Missouri, and Oklahoma, and
	From San Francisco, Monterey, San Jose, and Los Angeles, California
	To points in Arkansas, Kansas, Missouri, Oklahoma, Iowa, Nebraska, and Texas
	The Commission did NOT grant:
	(a) Idaho Falls and Twin Falls, Idaho, as points of origin;
	(b) any point in Illinois as destination;
	(c) any point in Texas or Iowa as destination from Seattle and Astoria
11. The Examiner did NOT recommend the following authority granted by the Commission:	
(a) Frozen fruits, frozen berries, and frozen vegetables	

Hearing Examiner	*Commission*
From points in California	
To points in Nebraska other than Omaha;	
(b) Frozen vegetables	
From Fort Smith, Arkansas	
To Miami and Jacksonville, Florida, and San Francisco, California;	
(c) Frozen vegetables	
From points in Delaware	
To points in Arkansas	